618.

SUPREME COURT OF THE UNITED STATES.

No. 104.

JAMES R. JONES, CHARLES C. JONES, WILLIAM S. GORMAN, ROBERT LOTT, JOHN TIPPIN, MATTHEW T. TIPPIN, AND JOHN R. TALLY, PLAINTIFFS IN ERROR,

v.

CATHERINE McMASTERS, BY HER NEXT FRIEND, MANUEL YBARBA.

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The United States of America, District of Texas, to wit:

At a term of the District Court of the United States, having and exercising the powers and jurisdiction of a Circuit Court of the same, for the District of Texas, appointed by the Honorable John C. Watrous, Judge of the said Court, held at the City of Galveston, on the first Monday of December, in the year of our Lord one thousand eight hundred and fifty, present, the Honorable John C. Watrous, Judge of the said Court, Joseph Bates, Esquire, Marshal, and James Love, Clerk, among other, were the following proceedings, to wit:

CATHERINE MCMASTER, by her next friend, MANUEL YBARBO,
v.
JAMES R. JONES, CHARLES C. JONES, WILLIAM S. GORMAN, ROBERT LOTT, and JOHN TIPPIN.

Be it remembered, that heretofore, to wit, on the twenty-third day of October, in the year of our Lord one thousand eight hundred and fifty, came Catherine McMaster, through her next friend, Manuel Ybarbo, by Robert Hughes, her attorney, into said District Court here, and filed her petition against James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, and John Tippin. Which said petition is in the words and of the tenor following, to wit:

Petition.

The United States of America, District of Texas, to wit.

District Court, December Term, 1850.

To the Honorable John C. Watrous, Judge of the District Court for said District:

The Petition of Catherine McMaster, an alien and citizen of the Republic of Mexico, and a resident of the State of Tamaulipas, a minor under twenty-one years of age, by her next friend, Manuel Ybarbo, a citizen of the State of Louisiana, residing in the City of New Orleans, plaintiff, against James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, and John Tippin, citizens of the State of Texas, residing in the County of Goliad, defendants.

And thereupon, your petitioner sets forth and complains, that heretofore, to wit, on the first day of October, A.D. 1850, at, to wit, in the District aforesaid, she was seized in her demesne as of fee, of, in, and to, a certain tract or parcel of land, situate, lying, and being in the County of Goliad and State of Texas, in the District

aforesaid, in the forks of the San Antonio River and the Cabaza Creek, and bounded as follows, to wit: Beginning at the junction of the San Antonio River and the said Cabaza Creek, thence with the meanders of the river, north fifty-seven degrees west, fifteen thousand varas, to a stake; from which, north thirty-nine degrees west, five varas, a pecan (noyal), ten inches in diameter, and north forty varas, another pecan (noyal); thence north thirteen thousand four hundred varas to the Cabaza Creek; thence with the meanders of said Creek to the place of beginning, containing four leagues, be the same more or less, with the hereditaments and appurtenances thereunto belonging or in any wise appertaining; and being so seized, and then and there possessed of the same, the said defendants, on the day and year last aforesaid, at the District aforesaid, entered in and upon the said tract or parcel of land, with the hereditaments and appurtenances aforesaid, and then and there ejected, expelled, put out, and amoved, your petitioner from the same, and continued her so ejected, expelled, put out, and amoved, for a long space of time, to wit, from thence hitherto; and other wrongs then and there did, to the great injury of your petitioner; wherefore she says she has sustained damage to the value of five thousand dollars, and therefore she brings suit, &c.

The premises considered, your petitioner prays, that the said James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, and John Tippin, be made defendants hereto, that citation issue directed to the Marshal of said District, commanding him to summon said defendants to be and appear in this Honorable Court, on the first Monday in the month of December next, then and there to answer this petition; that, after due trial, according to the forms of law, your petitioner may have judgment for her damages aforesaid, for the recovery of the tract or parcel of land, with the hereditaments and appurtenances aforesaid, and for her costs by her about her suit in this behalf expended, with writ of possession and other execution, or that such other judgment be rendered in her favor, or relief extended to her, as the nature of the case may require; and as in duty bound she will ever pray, &c.

ROB. HUGHES,
For Plaintiff.

On which petition, dated the day and year last aforesaid, is an acknowledgment by Robert Hughes and V. E. Howard, in the following words and figures, to wit:

We acknowledge ourselves security for costs in this.

ROB. HUGHES,
V. E. HOWARD.

And afterwards, to wit, on the twenty-ninth day of October, of the same year, citations in due form issued to the Marshal of the

District of Texas, which were in the words and of the tenor following, to wit:

Citation for James R. Jones.

United States District Court, District of Texas.

The President of the United States of America to the Marshal, or any of his lawful deputies, of the District of Texas, greeting:

You are hereby commanded to summon James R. Jones, if he be found in your District, to be and appear before the Honorable the District Court of the United States, at a court to be holden in and for the District of Texas, at the City of Galveston, on the first Monday of January next, to answer the petition and complaint of Catherine McMaster, who sues by her next friend, Manuel Ybarbo, against James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, and John Tippin, in an action of trespass and damage to the amount of five thousand dollars, of which you will serve the said defendant, James R. Jones, with the accompanying copy of said petition.

Witness, the Honorable John C. Watrous, Judge of said Court, and the seal of said Court, at the City of Galves-
[SEAL.] ton, this twenty-ninth day of October, A. D. 1850, and the seventy-fifth year of the Independence of the United States of America.

JAMES LOVE,
Clerk.

And thereupon, to wit, on said writ, is the return of the Marshal, in the words and figures following, to wit:

Marshal's Return.

Received, October 30th, 1850. Executed on the 4th day of November, A. D. 1850, by service of the within writ on the defendant, and by delivering to him a true copy thereof, together with a certified copy of the plaintiff's petition, furnished by the Clerk.

J. BATES,
United States Marshal.
By A. M. HUGHES,
Deputy Marshal.

Citation for Charles C. Jones.

United States District Court, District of Texas.

The President of the United States of America to the Marshal, or any of his lawful deputies, of the District of Texas, greeting:

You are hereby commanded to summon Charles C. Jones, if he be found in your District, to be and appear before the Honorable the

District Court of the United States, at a court to be holden in and for the District of Texas, at the City of Galveston, on the first Monday of January next, to answer the petition and complaint of Catherine McMaster, who sues by her next friend, Manuel Ybarbo, against James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, and John Tippin, in an action of trespass and damage to the amount of five thousand dollars, of which you will serve the said defendant, Charles C. Jones, with the accompanying copy of said petition.

Witness, the Honorable John C. Watrous, Judge of said Court, and the seal of said Court, at the City of Galves-
[SEAL.] ton, this twenty-ninth day of October, A. D. 1850, and the seventy-fifth year of the Independence of the United States of America.

JAMES LOVE,
Clerk.

On which writ is the return of the Marshal, in the words and of the tenor following, to wit:

Marshal's Return.

Received, October 30th, 1850. Executed on the 5th day of November, 1850, by service of the within writ on the defendant, and by delivering to him a true copy thereof, together with a certified copy of the plaintiff's petition, furnished by the Clerk.

J. BATES,
United States Marshal.
By A. M. HUGHES,
Deputy Marshal.

Citation for William S. Gorman.

United States District Court, District of Texas.

The President of the United States of America to the Marshal, or any of his lawful deputies, of the District of Texas, greeting:

You are hereby commanded to summon William S. Gorman, if he be found in your District, to be and appear before the Honorable the District Court of the United States, at a Court to be holden in and for the District of Texas, at the City of Galveston, on the first Monday of January next, to answer the petition and complaint of Catherine McMaster, who sues by her next friend, Manuel Ybarbo, against James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, and John Tippin, in an action of trespass and damage, to the amount of five thousand dollars, of which you will serve the said defendant, William S. Gorman, with the accompanying copy of said petition.

Witness, the Honorable John C. Watrous, Judge of said
[SEAL.] Court, and the seal of said Court, at the City of Galves-ton, this twenty-ninth day of October, A. D. 1850, and

the seventy-fifth year of the Independence of the United States of America.

JAMES LOVE.
Clerk.

On which said writ is the Marshal's Return, in the words and of the tenor following, that is to say:

Marshal's Return.

Received, October 30th, 1850. Executed on the 4th day of November, A. D. 1850, by service of the within writ on the defendant, and by delivering to him a true copy thereof, together with a certified copy of the plaintiff's petition, furnished by the Clerk.

J. BATES,
United States Marshal.
By A. M. HUGHES,
Deputy Marshal.

Citation for Robert Lott.

United States District Court, District of Texas.

The President of the United States of America to the Marshal, or any of his lawful deputies, of the District of Texas, greeting:

You are hereby commanded to summon Robert Lott, if he be found in your District, to be and appear before the Honorable the District Court of the United States, at a Court to be holden in and for the District of Texas, at the City of Galveston, on the first Monday of January next, to answer the petition and complaint of Catherine McMaster, who sues by her next friend, Manuel Ybarbo, against James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, and John Tippin, in an action of trespass and damage to the amount of five thousand dollars, of which you will serve the said defendant, Robert Lott, with the accompanying copy of said petition.

Witness, the Honorable John C. Watrous, Judge of said Court, and the seal of said Court, at the City of Galves-
[SEAL.] ton, this twenty-ninth day of October, A. D. 1850, and the seventy-fifth year of the Independence of the United States of America.

JAMES LOVE,
Clerk.

And thereupon, to wit, indorsed on said writ is the Marshal's Return thereof, in the following words and figures:

Marshal's Return.

Received, October 30th, 1850. Executed on the 4th day of November, A. D. 1850, by service of the within writ on the defendant,

and by delivering to him a true copy thereof, together with a certified copy of the plaintiff's petition, furnished by the Clerk.

J. BATES,
United States Marshal.
By A. M. HUGHES,
Deputy Marshal.

Citation for John Tippin.

United States District Court, District of Texas.

The President of the United States of America to the Marshal, or any of his lawful deputies, of the District of Texas, greeting:

You are hereby commanded to summon John Tippin, if he be found in your District, to be and appear before the Honorable the District Court of the United States, at a Court to be holden in and for the District of Texas, at the City of Galveston, on the first Monday of January next, to answer the petition and complaint of Catherine McMaster, who sues by her next friend, Manuel Ybarbo, against James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, and John Tippin, in an action of trespass and damage to the amount of five thousand dollars, of which you will serve the said defendant, John Tippin, with the accompanying copy of said petition.

Witness, the Honorable John C. Watrous, Judge of said Court, and the seal of said Court, at the City of Galves-
[SEAL.] ton, this twenty-ninth day of October, A. D. 1850, and the seventy-fifth year of the Independence of the United States of America.

JAMES LOVE,
Clerk.

And thereupon, to wit, indorsed on said writ is the Return of the Marshal made thereof, in the following words and figures:

Marshal's Return.

Received, October 30th, 1850. Executed on the 4th day of November, A. D. 1850, by service of the within writ on the defendant, and by delivering to him a true copy thereof, together with a certified copy of the plaintiff's petition, furnished by the Clerk.

J. BATES,
United States Marshal.
By A. M. HUGHES,
Deputy Marshal.

And afterwards, to wit, on the twelfth day of December, in the year of our Lord one thousand eight hundred and fifty, came the defendants, by Pryor Lea, their attorney, and filed their plea of not guilty, which is of the words and tenor following, that is to say:

In the District Court of the United States, for the District of Texas, at the December Rules, 1850.

In the case of Catherine McMaster, who sues by her next friend, Manuel Ybarbo, against James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, and John Tippin, the defendants come and say, that they are not guilty of the trespass as complained of in the petition; and of this they put themselves on the country.

PRYOR LEA,
Attorney.

And afterwards, to wit, on the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-one, the Court made an order in this cause, which is in the words and of the tenor following, to wit:

CATHERINE MCMASTER
v.
JAMES R. JONES et al.

Continued.

And afterwards, to wit, on the eighteenth day of July, in the year of our Lord one thousand eight hundred and fifty-one, came the plaintiff, by her attorney, and filed the following order, to wit:

The United States of America, District of Texas, to wit.

District Court. In Vacation. July 19th, 1851.

CATHERINE MCMASTER, a minor, by next friend, MANUEL YBARBO, Plaintiff,
v.
JAMES R. JONES, CHARLES C. JONES, WILLIAM S. GORMAN, ROBERT LOTT, and JOHN TIPPIN, Defendants. } Trespass.

Upon application of the plaintiff aforesaid, by their attorney, it is ordered, that the new surveyor of the County of Goliad, in the District aforesaid, be and he is hereby appointed surveyor in this action, and that said surveyor, having first given five days' notice thereof in writing to the parties aforesaid, their agents or attorneys, do go upon the land in dispute, and survey and lay off the same, as either party may require; and having made said survey, make three fair plats and certificates of said survey, and make return thereof to the next term of this Court.

JOHN C. WATROUS.

And afterwards, to wit, on the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and fifty-three, the

Court made an order in this cause, which is in the words and of the tenor following, to wit:

CATHERINE MCMASTERS, by next friend, &c.,
v.
JAMES R. JONES et als.

Ordered that this cause be continued.

And afterwards, to wit, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and fifty-four, came Matthew T. Tippin, by his attorney, Pryor Lea, Esquire, and filed his petition in the words and of the tenor following, to wit:

To the Honorable John C. Watrous, Judge of the District Court of the United States for the District of Texas, at Galveston.

The petition of Matthew T. Tippin respectfully shows, that he is a citizen of the State of Texas, resident in Goliad County thereof. That John Tippin appears to be one of the defendants in a suit now pending in this honorable Court, numbered 330, Catherine McMaster, by her next friend, Manuel Ybarbo, against James R. Jones and others; that said John Tippin is a tenant of your petitioner for the land for which he is sued; that your petitioner claims the same as landlord and true owner; wherefore he prays to be admitted a defendant, that he may make defence as if he had been originally sued.

MATTHEW T. TIPPIN.
By his attorney,
PRYOR LEA.

On which foregoing petition is the admission of facts stated in the above, by Robert Hughes, Esq., attorney for plaintiffs.

I admit the facts stated in the foregoing petition to be true.

ROBERT HUGHES,
For plaintiff.

January 24th, 1854.

And afterwards, to wit, on the same day and year, the Court made an order in this cause, in the words and of the tenor following, to wit:

CATHERINE MCMASTER, by her next friend, plaintiff,
v.
JAMES R. JONES and others, defendants.

On this day, Matthew T. Tippin, by his attorney, filed his petition, and for reasons therein given, prayed the Court for leave to enter himself as defendant in the above-entitled cause in the room and stead of the defendant, John Tippin, one of the tenants in possession. It is therefore ordered, that the said Matthew T. Tippin be entered

defendant in the room and stead of the said John Tippin, and have leave to plead to the action aforesaid.

And afterwards, to wit, on the same day and year, came John R. Tally, by Pryor Lea, his attorney, and filed his petition, which is in the words and of the tenor following, to wit:

To the Honorable John C. Watrous, Judge of the District Court of the United States for the District of Texas, at Galveston.

The petition of John R. Tally respectfully shows, that he is a citizen of the State of Texas, resident in Refugio County thereof; that Robert Lott appears to be one of the defendants in a suit now pending in this honorable Court, numbered 330, Catherine McMasters, by her next friend, Manuel Ybarbo, against James R. Jones, and others; that said Lott is a tenant of your petitioner for the land for which he is sued; that your petitioner claims the same as landlord and true owner. Wherefore he prays to be admitted a defendant, that he may make defence as if he had been originally sued.

JOHN R. TALLY.

By his Attorney,
PRYOR LEA.

On which, under the same date as the foregoing, is an admission of facts by Robert Hughes, Esquire, plaintiff's attorney, which is as follows:

I admit the facts stated in the foregoing petition to be true.

ROBT. HUGHES,
Attorney for plaintiff.

January 24, 1854.

And thereupon, to wit, on the day and year aforesaid, the Court made an order in this cause relative to the foregoing petition, in the words following, to wit:

CATHERINE MCMASTER, by her next friend,
v.
JAMES R. JONES et als.

On this day John R. Tally, by his attorney, filed his petition, alleging that Robert Lott, one of the defendants in the above-entitled cause, is the tenant in possession of the land sued for, of the petitioner, and praying that petitioner have leave to enter himself as defendant in the room and stead of said Robert Lott. It is therefore ordered by the court that the said John R. Tally have leave to enter himself as defendant in the above-entitled cause, in the room and stead of the said Robert Lott, and have leave to plead to the aforesaid action.

And afterwards, to wit, on the twenty-fifth day of January of the same year, came Matthew T. Tippin, by Pryor Lea, his attorney, and filed his plea of not guilty to the trespass alleged against him. Which said plea is as follows:

District Court of the United States, at Galveston, January Term, 1854.

CATHERINE MCMASTER, by her next friend, MANUEL YBARBO,
v.
JAMES R. JONES and others. } No. 330.

Comes the defendant, Matthew T. Tippin, by his attorney, when and where, &c., and says he is not guilty as the plaintiff has alleged against him; and of this he puts himself on the country.

PRYOR LEA,
Attorney.

And afterwards, to wit, on the day and year last aforesaid, came John R. Tally, in proper person, and filed his plea in this cause. Which is in the words and of the tenor following, to wit:

District Court of the United States, at Galveston, January Term, 1854.

CATHERINE MCMASTER, by her next friend, MANUEL YBARBO,
v.
JAMES R. JONES and others. } No. 330.

Comes the defendant, John R. Tally, and says, that this honorable Court has not jurisdiction of this suit, as he is advised, because he says that plaintiff was born at Goliad, within that part of the State of Coahuila and Texas, called Texas, when it was part of the Republic of Mexico; that her mother was Juana Trejo, and her father was James McMasters; that her mother was a Mexican citizen by birth, having been born at the same place; that her father had been a foreigner, but at the time of the marriage between her father and mother, they were both permanently domiciled at the same place, and they so continued to live together as husband and wife, and more permanently domiciled at the same place, Goliad, until the birth of plaintiff, and until the subsequent death of each of them respectively; that plaintiff continued to reside at the same place from her birth during the lifetime of her parents, and until after the commencement of the revolution by which Texas achieved her independence of the Government of Mexico, and established her sovereignty as a nation; and at the time of instituting this suit, plaintiff was a minor, under the age of twenty-one years, and never

had been married; and the plaintiff continues under the age of twenty-one years and unmarried to the present time; that the plaintiff was removed from the Territory of Texas to Matamoras, west of the Rio Grande del Norte, in Mexico, when she was about the age of four years, and when the struggle of said revolution was progressing, and before the declaration of independence by Texas, on the second day of March, one thousand eight hundred and thirty-six; that she was so removed by and with the family of one Manuel Sabriego, in which she previously lived in Texas, and in which she has continued to reside at different places in Mexico. And so this defendant says that plaintiff was a citizen of the State of Texas, and not an alien of the United States of America, at the time of instituting this suit. And this he is ready to verify. Wherefore he prays judgment if this honorable Court will entertain jurisdiction of this suit, &c.

JOHN R. TALLY.

Sworn to and subscribed before me, this 25th day of January, A. D. 1854.

JOHN S. JONES,
United States Commissioner.

Afterwards, to wit, on the seventh day of February, of the same year, there issued from the Clerk's Office of this Court a subpœna for a witness on the behalf of the defendants, which is in the words following, to wit:

The United States of America, District of Texas.

The President of the United States to the Marshal of the District of Texas, greeting:

You are hereby commanded to summon Samuel A. White to be and appear before the Honorable the District Court of the United States for the District of Texas, at a court now in session at the City of Galveston, in said District, then and there to testify on behalf of defendant in a certain cause, wherein Catherine McMaster, by her next friend, &c., is complainant, and James R. Jones and others are defendants. Herein fail not, and due return make of this writ.

Witness the Honorable John C. Watrous, Judge of said [SEAL.] Court, and seal thereof, this seventh day of February, A. D. 1854.

JAMES LOVE,
Clerk.

On which writ of subpœna is the return of the Marshal, in the following words:

Marshal's Return.

Received, February 7th, 1854, and executed same day, by reading this writ to Samuel A. White, in Galveston.

BEN. McCULLOCH,
United States Marshal.
By E. T. AUSTIN,
Deputy.

And afterwards, to wit, on the tenth day of March, in the year of our Lord one thousand eight hundred and fifty-four, came John R. Tally, one of the defendants, and filed his affidavit, which is in the words following, to wit:

United States of America, District of Texas.

District Court at Galveston. January Term, 1854.

John R. Tally, a defendant in the suit at law now pending in the said Court, in which suit Catherine McMasters is plaintiff, by her next friend, Manuel Ybarbo, and said Tally and others are defendants, on oath says, that there appears an indorsement on the petition in this case, in the following words, viz.:

"We acknowledge ourselves security for costs in this. October 23d, 1850.

ROB. HUGHES,
V. E. HOWARD."

And this appears to be all the kind of security for costs in this behalf. Said Tally says that said Howard has removed to California, as affiant has been informed and believes, and he objects to the sufficiency of said security for that cause, but he further objects, because he is advised, and so charges, that said indorsement is not a proper and sufficient mode of securing the costs, which amount already to a considerable sum, and may be greatly increased. Wherefore the affiant moves the Court for a rule on the plaintiff, to give good and sufficient security for the costs in this behalf.

JOHN R. TALLY.

Sworn to and subscribed before me, this 30th day of January, A. D. 1854.

JOHN S. JONES,
United States Commissioner, District of Texas.

And afterwards, to wit, on the eleventh day of March, of the same year, came the defendants, by Pryor Lea, their attorney, and filed their motion, which is in the words and of the tenor following, to wit:

CATHERINE MCMASTERS, by her next friend, MANUEL YBARBO, v. JAMES R. JONES and others. } No. 330, at Law, in the United States District Court, at Galveston.

The defendants, for cause shown by affidavit filed, move the Court, that the plaintiff be ruled to give other and good security for the costs in this case, or that said suit shall be dismissed.

PRYOR LEA,
Attorney for defendants.

March 11, 1854.

And afterwards, to wit, on the thirteenth day of March, of the same year, came the plaintiff, by her attorney, and demurred to the plea of the defendant, censuring the jurisdiction of the Court; which demurrer is in the following words, to wit:

The United States of America, District of Texas, to wit.

District Court at Galveston, January Term, 1854.

CATHERINE MCMASTER, by next friend, MANUEL YBARBO, v. JAMES R. JONES et als. } No. 330. Trespass to try title.

And now comes the plaintiff aforesaid, by her counsel, and says she ought not to be barred and precluded from having and maintaining her action in this Court, by reason of anything contained in the plea of cognizance by the defendant, J. R. Tally, filed herein, because he says said plea and the matters and things therein contained are not sufficient in law for this Court to refuse to take cognizance of the action aforesaid, and this she is ready to verify; wherefore, she prays judgment, &c.

ROB. HUGHES,
For plaintiff.

And afterwards, to wit, on the same day and year, the Court here made an order in this cause, which is of the words following, to wit:

CATHERINE MCMASTER, by, &c., v. J. R. JONES et als. }

On this day come on to be heard the plea of defendant to the jurisdiction of the Court, and the plaintiff's demurrer thereto. After argument of counsel heard, and the Court being now sufficiently advised, it is ordered that the demurrer be overruled, and that the defendant be required to answer the plaintiff's petition; and, thereupon, he filed his plea of not guilty.

And thereupon, to wit, on the fourteenth day of March, of the same year, came the defendant, John R. Tally, by his attorney, and filed his plea of not guilty; which plea is in the words following, to wit:

District Court of the United States, at Galveston, January Term, 1854.

CATHERINE MCMASTER, by her next friend, MANUEL YBARBO, v. JAMES R. JONES and others. } No. 330.

Comes the defendant, John R. Tally, by his attorney, when and where, &c., and says he is not guilty of the supposed trespass, as the plaintiff has alleged against him; and of this he puts himself upon the country.

PRYOR LEA,
Attorney.

And afterwards, to wit, on the same day and year, Pryor Lea, Esquire, the attorney for defendants, came into Court and filed his affidavit, which is in the words and of the tenor following, to wit:

Affidavit.

In the District Court of the United States, at Galveston, January Term, 1854.

CATHERINE MCMASTERS, by her next friend, MANUEL YBARBO, v. JAMES R. JONES and others. } No. 330.

Pryor Lea represents that he is acting as agent as well as attorney of the defendants in this case, it being inconvenient for them to attend to it in this Court.

Affiant states that S. A. White, of Calhoun or Victoria County, Texas, is a witness for the defendants, and he was duly summoned to attend as such, on the 7th of last month (as appears by a subpœna, and the return thereon), and he continued in attendance as such witness for some time thereafter,—but he is not now in attendance. His absence is not by the consent of any of the defendants—as affiant believes—nor is his absence by the consent of this affiant; the attendance or deposition of said witness may be had at the next term of this Court, as affiant believes; but his attendance is preferred, as better calculated to present the evidence satisfactorily.

Affiant further states, that the archives of the municipality of Goliad, under the Mexican Government, or some transcript, or depo-

sition, showing their contents in part, will be evidence material for the defendants, as affiant believes, and none of the defendants have been apprised of the materiality of this evidence, as affiant believes; nor was he apprised of it until the 10th day of this month; since which time there has not been any opportunity to procure said evidence. Affiant has been recently informed, and believes, that said archives are at Matamoras, in Mexico; and that said evidence may be obtained by the next term of this Court. Due and legal diligence has been used on the part of defendants to procure the evidence aforesaid, in both particulars. The defendants have no other evidence to supersede the foregoing.

The testimony of said White will prove or strongly conduce to prove, as affiant is informed and believes, that the eastern boundary of the grant under which the plaintiff claims title, called the Cabeza, was not a running rivulet or "creek," at and about the time of making the survey, and extending the title of possession in this behalf.

The proof from the archives, as affiant is informed and believes, will show, that no opposing claim to the land, on the east of the Cabeza, existed so as to prevent extending the survey and grant in that direction, according to Article 29, of Decree 190, of Laws of Coahuila and Texas.

Each part of said evidence, in connection with other proof to be adduced, as affiant is informed and believes, will strongly conduce to show, that the survey and possessory title aforesaid, were made in violation of the law aforesaid; and that they were so made by the fraudulent procurement of the grantee, through her agent in that behalf, with the fraudulent connivance of the surveyor and commissioner who made the survey and possessory title for grantee.

The premises considered, a continuance is requested for the attainment of a full and fair trial.

PRYOR LEA.

Subscribed and sworn to, in open court, March 14th, 1854.

JAMES LOVE,
Clerk.

And afterwards, to wit, on the same day and year, the Court here made an order in this cause, which is in the words and of the tenor following, to wit:

CATHERINE MCMASTER, by her next friend, &c.,
v.
JAMES R. JONES et als.

On this day the defendant filed his plea of not guilty to the trespass complained of in plaintiff's petition, and upon his affidavit it is ordered that this cause be continued.

And afterwards, to wit, on the twenty-fourth day of March, of the same year, the Court here made an order in this cause, which is in the words and of the tenor following, to wit:

CATHERINE MCMASTER, by, &c.,
v.
JAMES R. JONES et als. } Law Case.

On this day came the parties by their attorneys, and for sufficient cause now appearing to the Court, it is ordered, that the depositions of all witnesses residing in the United Mexican States, whose testimony may be needed by any of the parties to this cause, may be taken by letters rogatory, to be issued under the seal of this Court, in the form prescribed in the suit of Rafael Garcia Cavazos et als. against Simon Massina; that before the issuance of such letters rogatory, the interrogatories shall be filed in the clerk's office for ten days, of which said filing ten days' notice shall be given the adverse party or their counsel; during said time of ten days, cross-interrogatories may be filed, and copies of such interrogatories and cross-interrogatories shall be attached to the letters rogatory when issued, together with a correct translation of the same into the Spanish language.

And afterwards, to wit, on the eighteenth day of January, in the year of our Lord one thousand eight hundred and fifty-five, the Court here made an order in this cause, which is in the words and of the tenor following, to wit:

CATHERINE MCMASTER
v.
JAMES R. JONES.

On motion, it is ordered, that defendant have leave to amend.

And afterwards, to wit, on the same day and year, came the defendants by Pryor Lea, their attorney, and amended their defence as follows.

In the District Court of the United States, for the District of Texas, at Galveston.

CATHERINE MCMASTERS, by her next friend, MANUEL YBARBO,
v.
JAMES R. JONES and others. } 330.

With leave of the Court, the defendants, by attorney, in addition

to their plea of not guilty, say the plaintiff, Catherine McMasters, should not have and maintain her suit in this behalf, because she is barred therefrom by the law of limitation for such cases, in this, that she claims title to the premises for which this suit was instituted, by inheritance, as the grandchild and only heir of Maria de Jesus Ybarbo, who was a native of Goliad, which is within the limits of the Republic of Texas, and who continued to reside at that place until her death, which occurred in the year one thousand eight hundred and thirty-four; and the plaintiff was not residing in the Republic of Texas at the time of the Declaration of its Independence, on the second day of March, one thousand eight hundred and thirty-six, and has, from that date, been an alien to said Republic, and resided beyond its limits, within the Republic of Mexico, and had so continued an alien to said Republic of Texas, and resided beyond its limits, in Mexico, more than nine years immediately preceding the institution of this suit, and during all that time had not taken possession of, nor disposed of, the premises claimed by her in this behalf; and this the defendants are ready to verify, wherefore, they pray judgment, &c.

PRYOR LEA,
Attorney.

And afterwards, to wit, on the same day and year, in pursuance of the order of Court made in this behalf, a bond for the costs in this cause was filed, which is in the words and of the tenor following, to wit:

Bond.

Know, all men, by these presents, that we, Catherine McMaster, Robert Hughes, and Thomas J. Coffee, are held and firmly bound unto John R. Tally, Matthew T. Tippin, William S. Gorman, Charles C. Jones, L. S. Mooning, James R. Jones, and Giles Carter, in the just and full sum of one thousand dollars, for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 18th day of January, A.D. 1855.

The condition of the above obligation is such that, whereas the above bound Catherine McMaster has heretofore commenced her action of trespass to try title against said John R. Tally, and others above named, in the District Court of the United States for the District of Texas, and said suit is now depending, and security being required for costs, this bond is given. Now, should the said Catherine McMaster prosecute her said action to effect, or in case she fail therein, shall pay all such costs as may be, and has been, incurred

herein, then this obligation to be, else to be, and remain in full force and effect.

CATHERINE McMASTER. [SEAL.]
By ROB. HUGHES,
Her Attorney.
ROB. HUGHES. [SEAL.]
THOS. J. COFFEE. [SEAL.]

Witness,
JNO. H. HUGHES,
A. M. HUGHES.

And afterwards, to wit, on the nineteenth day of January, of the same year, came the plaintiff, by her attorney, and filed a demurrer to the plea of defendants, in the words and of the tenor following, to wit.

The United States of America, District of Texas, to wit.

District Court, January Term, 1855.

CATHERINE McMASTER
v.
JAMES R. JONES et als. } Trespass, &c.

And now comes the plaintiff aforesaid, by her attorney, and says, precludi non, by reason of anything in the defendant's plea of limitation in this behalf pleaded, because she says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude her from having and maintaining her action aforesaid, and this she is ready to verify, wherefore, they pray judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, and the plaintiff sets down and shows the following, to wit:

1. By the said plea the said defendants show the plaintiff, then a citizen of the State of Coahuila and Texas, before the Declaration of Independence in Texas, had acquired a title by descent to the land in contest. Yet the said defendants invoke the aid of a provision of the Constitution and Laws of the Republic of Texas, applicable to descents cast after the creation of said Republic of Texas.

2. According to the showing of said plea, at and before the Declaration of Independence in Texas, an estate had vested in said plaintiff in and to the land in contest; and said defendants by said plea have not shown a divestiture, escheat, or forfeiture, of said estate.

3. It is manifest from said plea, that plaintiff, before the revolution in Texas, had an indefeasible estate in fee, in and to the lands in contest, and nothing is shown by which, after said revolution, she was in any manner deprived of said estate.

4. And there are other causes of demurrer, &c.

ROBT. HUGHES,
For plaintiff.

And afterwards, to wit, on the twenty-fourth day of January of the same year, the Court made an order in this cause, which is in the words and of the tenor following, to wit:

CATHERINE MCMASTER, by her next friend,
v.
JAMES R. JONES and others.

On this day came the parties by their attorneys, and thereupon came a jury of good and lawful men, to wit: William R. B. Wills, John J. Dunn, Daniel Swett, Pryor Bryan, Jesse J. Davis, David Gilbert, James E. Haviland, Robert Shears, John T. Rockwood, George Barker, Owen D. Johnson, and James W. Moore, who were duly elected, tried, and sworn, and the evidence herein not being finished, by consent of parties, the jury were permitted to disperse until to-morrow morning at ten o'clock.

And afterwards, to wit, on the twenty-fifth day of January of the same year, an order of Court was entered on the minutes, which is in the following words:

CATHERINE MCMASTER, by her next friend,
v.
JAMES R. JONES and others.

On this day came the parties by their attorneys, and the argument of this cause not being completed, by consent of parties, the jury was permitted to disperse until to-morrow morning.

And afterwards, to wit, on the twenty-sixth day of January of the same year, this cause came on to be further heard, and an order was made by the Court here, which is as follows, to wit:

CATHERINE MCMASTER, by her next friend,
v.
JAMES R. JONES and others.

The argument in this cause not having been completed, the jury were, by consent of parties, permitted to disperse until to-morrow morning.

And afterwards, to wit, on the thirty-first day of January, in the year of our Lord one thousand eight hundred and fifty-five, a judgment was entered in this cause, which is in the words following, to wit:

CATHERINE MCMASTER, by her next friend, MANUEL YBARBO,
v.
JAMES R. JONES, CHARLES C. JONES, and JOHN R. TALLY.

This day come the parties aforesaid by their attorneys, and thereupon came also a jury empannelled herein, who were respited from their verdict herein until to-day, whereupon the said jury rendered the following verdict, to wit: "We, the jury, find for the plaintiff, and assess her damages at one cent. James W. Moore, foreman." It is therefore considered by the Court that the plaintiff recover of the said defendants, James C. Jones, Charles C. Jones, and John R. Tally, the tract or parcel of land in the petition described, and every part thereof, together with the damages aforesaid by the jurors aforesaid assessed, also the further sum of one hundred and two dollars and ninety-five cents, for her costs by her about her suit in this behalf expended. And it is ordered that a writ of habere facias, &c., issue.

And afterwards, to wit, on the same day and year, the bill of costs accruing in this cause was filed by the Clerk, which is of the following words and figures, to wit:

Bill of Costs.

CATHERINE MCMASTER
v.
JAMES R. JONES and others.
Bill of Costs.

1850.			
October 23,	Filing Petition,		$0 25
" "	Taking Bond for Costs,		1 33
" "	Docketing Cause,		67
" 29,	Issuing 5 Citations,		6 66
" "	5 Copies of Petition,		7 50
Dec'r 12,	Filing Plea,		25
" Tm.,	Entering Continuance,		27
			$16 93
1851.			
May 19,	Do. do.		27
July 18,	Filing Order of Survey,		25
			$17 45
1853.			
July 25,	Entering Continuance,		15
			$17 60

1854.

January	24,	Filing Petition of Tippin,	10
"	"	Do. do. Tally,	10
"	"	Entering Order,	15
"	25,	Filing 2 Pleas,	20
Febr'y	7,	Issuing Subpœna,	25
March	10,	Filing Affidavit,	10
"	11,	Do. and Entering Motion,	25
"	13,	Do. Plea,	10
"	"	Entering Order,	15
"	14,	Filing Plea,	10
"	"	Do. Affidavit,	10
"	"	Entering Order,	15
March	24,	Do. do.	15
			$19 50

1855.

January	18,	Filing Testimony,	10
"	"	Entering Order,	15
"	"	Filing Plea,	10
"	"	Do. Additional Bond for Costs,	10
"	19,	Do. Demurrer,	10
"	24,	Entering Order,	15
"	25,	Do. do.	15
"	26,	Do. do.	15
"	31,	Do. Judgment,	30
"	"	Docket Fee, &c.,	3 00
"	"	Record of Proceedings (88 folios),	13 20
"	31,	Filing Cost Bill,	10
Febr'y	16,	Entering 2 Orders,	1 50
"	19,	Do. and Filing 2 Motions,	1 10
"	"	Do. Order,	15
"	20,	Filing Bill of Exceptions,	10
"	"	Additional Record (90 folios),	13 50
		Clerk's Costs (Love),	53 45
		Marshal's Costs (Bates),	29 00
		Marshal's Costs (McCulloch),	50
		Attorney's Fees,	20 00
			$102 95

And afterwards, to wit, on the sixteenth day of February of the year of our Lord one thousand eight hundred and fifty-five, the Court here rendered a judgment against Matthew T. Tippin, in the words and figures following, to wit:

CATHERINE MCMASTER, by her next friend,
v.
MATTHEW T. TIPPIN and others. } Trespass, &c.

On this sixteenth day of February, A.D. 1855, came the parties by their attorneys, and thereupon came a jury, to wit, George Nelson, Francis B. Whiting, David Webster, William McDonald, John J. Dunn, Owen D. Johnson, Jacob Smith, John Hughes, Ira M. Freeman, Jesse J. Davis, Willard Richardson, and James Forest, who being duly elected, tried, and sworn, well and truly to try the issue joined, on their oaths do say, "We, the jury, find the defendant, Matthew T. Tippin, not guilty, as to the land indicated in the following bounds, namely:

"Beginning on the bank of the San Antonio River at a small box elder, the lower corner of five hundred and ninety-seven and one-half acres, sold to William S. Gorman; thence north thirty-five and a half degrees east, two hundred and forty poles, to a stake on the line of said Gorman; thence south fifty-four and a half degrees east, two hundred and sixty-eight poles, to a stake; thence south thirty-five and one-half degrees west, ninety-six poles, to a cottonwood on the bank of the river, the lower corner of a five hundred and fifty-six and a half acre survey, in the name of D. H. Palmer; thence up the river, with the meanders thereof, to the place of beginning, containing seven hundred and forty-eight and one-half acres; but guilty as to the remainder of the lands not within the boundaries aforesaid, and within the locations and surveys of said defendant, Matthew T. Tippin. W. Richardson, Foreman."

It is therefore considered by the Court that the defendant, so far as relates to the land and premises in the verdict aforesaid mentioned, go hence without day. And as to the residue of land in plaintiff's petition mentioned, that said plaintiff recover of the said defendant said residue of said lands in the said plaintiff's petition mentioned together with her costs about her suit in this behalf expended, and that she have execution therefor.

And afterwards, to wit, on the same day and year, a verdict was rendered by the Court here against William S. Gorman, one of the defendants to this, which is in the words following.

CATHERINE MCMASTER, by her next friend,
v.
WILLIAM S. GORMAN.

On this 16th day of February, A. D. 1855, came the parties aforesaid by their attorneys, and thereupon came a jury, to wit: George Nelson, Francis B. Whiting, David Webster, William M'Donald, John J. Dunn, Owen D. Johnson, Jacob Smith, John Hughes, Ira

M. Freeman, Jesse J. Davis, Willard Richardson, and James Forrest, good and lawful men, who being duly elected, tried, and sworn, well and truly to try the issue joined, on their oaths do say, "We, the jury, find the defendant, William S. Gorman, not guilty, as to the land included in the following bounds, namely:

"Beginning on the eastern and northern bank of the San Antonio River, at a small box elder standing on the bank of said river, about eighty-two poles below the upper corner of said Gorman's six hundred and forty acres, thence north forty-six degrees east, one hundred and sixty-two poles, up the river, with the meanders of said river to a large cottonwood and small hackberry, on the bank of said river, thence north thirty-five and a half degrees east, five hundred and eighty-eight poles, to the Cabeza Creek, thence down said creek with the meanders of the same, when reduced to a straight line, one hundred and sixty-four and three-fourths poles, thence south thirty-five and one half degrees west, six hundred and sixty-two poles to the place of beginning, containing five hundred and ninety-seven and one half acres. But guilty as to the remainder of the lands not within the boundaries aforesaid, and within the locations and surveys of said defendant, William S. Gorman. W. Richardson, foreman."

It is therefore considered by the Court that the defendant, so far as relates to the land specified in the verdict of the jury as aforesaid, go hence without day, and as to the residue of the land in plaintiff's petition mentioned, that the plaintiff recover of and from the said defendant, said residue of lands in plaintiff's petition mentioned, together with her costs by her about her suit in this behalf expended, for which she may have execution.

And afterwards, to wit, on the nineteenth day of February, of the year last aforesaid, came the defendants by their attorney, and filed their motion, which is in the following words.

CATHERINE MCMASTER
v.
JAMES R. JONES and others.

Come the defendants by their attorney, and move the Court for a new trial, for the foregoing reasons.

1st. There was error in admitting as evidence for the plaintiff, the Testimonio, without witnesses of assistance.

2d. There was error in admitting the deposition of Jose Miguel Aldrete, in relation to the execution of the title of possession.

3d. There was error in the charge of the Court, in saying that the plaintiff, as a Mexican citizen, could maintain this action, and that her title was sustained and ratified by the Treaty of Guadalupe Hidalgo.

4th. There was error in the charge in other particulars, to be shown in argument.

5th. The verdict of the jury was against law and evidence.

PRYOR LEA,
Attorney.

And afterwards, to wit, on the same day and year, the Court here made an order, in this, which is in the words and of the tenor following, to wit:

CATHERINE MCMASTERS, by next friend,
v.
JAMES R. JONES and others.

On this nineteenth day of February, A. D. 1855, came the parties, by their attorneys, and thereupon came on to be heard the motion of the defendants filed on this day for a new trial of this cause, upon consideration whereof, and the Court being now fully advised, it is ordered that the said motion be denied.

And afterwards, to wit, on the day and year aforesaid, came Matthew T. Tippin and William S. Gorman, by Pryor Lea, their attorney, and moved the Court for a new trial in this, as follows:

CATHERINE MCMASTER
v.
WILLIAM S. GORMAN and MATTHEW T. TIPPIN.

Come the defendants, by their attorney, and move the Court for a new trial, for the foregoing reasons.

1. There was error in admitting as evidence for the plaintiff, the Testimonio, without witnesses of assistance.
2. There was error in admitting the deposition of Jose Miguel Aldrete, in relation to the execution of the title of possession.
3. There was error in the charge of the Court, in saying that the plaintiff, as a Mexican citizen, could maintain this action, and that the title was sustained and ratified by the Treaty of Guadalupe Hidalgo.
4. There was error in the charge in other particulars, to be shown in argument.
5. The verdict of the jury was against law and evidence.

PRYOR LEA,
Attorney.

And afterwards, to wit, on the same day and year, the Court here made an order, in this, which is in the words and of the tenor following, to wit:

CATHERINE MCMASTER, by next friend, &c.,
v.
WILLIAM S. GORMAN and MATTHEW T. TIPPIN.

On this nineteenth day of February, A. D. 1855, came the parties

aforesaid, by their attorneys, and thereupon came on to be heard the motion of said defendants, filed on this day for a new trial of this cause. And the Court being now fully advised, it is ordered that the said motion be denied.

And afterwards, to wit, on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, came the defendants, by Pryor Lea, their attorney, and filed their Bill of Exceptions in this cause, which is in the words and of the tenor following, to wit:

Bill of Exceptions.

CATHERINE McMASTER
v.
JAMES R. JONES and others. } 330.

Be it remembered, that on the trial of this cause, the plaintiff offered as evidence a Testimonio, and with it the deposition of Jose Miguel Aldrete, to prove the extension of it, and of the original title of possession; but the defendants objected to the admissibility of each part of said evidence. The Court, however, admitted the Testimonio and the deposition. To which opinion of the Court's, defendants then excepted. The Testimonio, as read by translation (the original being present), is as follows:

[SEAL.] Second Seal, Twelve Bits. For the years eighteen hundred and twenty-six, and eighteen hundred and twenty-seven, 28, 29, 30, 31, 32, 33, and 34.

Mr. Alcalde of this town:

Maria de Jesus Ybarbo, a resident here, before you presents herself and says, that the Supreme Government of the State, by decree of the 16th day of October, of the past year of 1832, conceded to her, by way of sale, and according to the rule of the last law of colonization, four leagues of land, at the same point where her deceased husband had a ranch, between the right and left banks of the Cabeza Creek and the River San Antonio; and for the same, I come to you, as Commissioner for the Distribution of Lands, within the limits which include your jurisdiction, to the end that, in conformity to the disposition made by the Supreme Government, you will please to order the survey of said land, and extend the corresponding title of possession, under the view, that according to the locality of the land, which I have conceded to me, there ought to result a triangular figure, inasmuch as the angle formed by the junction of said creek and river renders it indispensable that the lines or measurement for length and breadth should follow the meanders of both banks to the completion of the four leagues; and for the expediting the corresponding title of possession, I refer you to the annexed legalized

copy of the despatch, began in the government, town of Goliad, 15th June, 1833, for my mother-in-law. Samuel McMaster. Goliad, 25th June, 1833.

Presented and allowed, with the accompanying documents, in attention to which, the land denounced having been declared vacant, by the law of the State, No. 177, not belonging to a corporation or any person, or empresas of colonization, and out of the littoral leagues, and within the limits including the jurisdiction of this municipality, in consequence of the commission of distribution of lands given by the Supreme Government of the State to the Alcalde of this town, in the superior order of the twenty-fifth day of June, 1831, I ought to command, and by these presents decree command, that the scientific surveyor, George W. Cash, appointed under previous corresponding security, proceed to the survey of the lands, what the party solicits, and to which effect I let there be given, by myself, the proper notification by me, before those of my assistance.

JOSE MIGUEL ALDRETE.

ASS.: YLARIO DE LA GARZA.
JOSE DE JESUS RIOJAS.

In continuation of this act, I present, and of myself notify to the surveyor, George W. Cash, the preceding decree, in the giving of it I say, that ye hear! and in obedience, you shall proceed to the survey, according to your best knowledge and intent, it being mentioned that in continuation of this despatch, you ought set down the notes of the corresponding survey, and sign this with me and those of my assistance, conformably the law.

GEORGE W. CASH.
JOSE MIGUEL ALDRETE.

ASS.: YLARIO DE LA GARZA,
JOSE DE JESUS RIOJAS.

Mr. Alcalde, Commissioner: The land surveyed for Mrs. Jesua Ybarbo, in compliance with the decree and notification which precedes, is situated between the River San Antonio and the Cabeza Creek, at the crossing of the road from this town to the City of Bexar. I commenced said survey at the junction of the creek and said river, thence with the meanders of the river, north fifty-seven degrees west, fifteen thousand varas, where I placed a stake; from which north thirty-nine degrees west, five varas distant, a pecan, ten inches in diameter; and north, forty varas distant, another pecan; thence north, thirteen thousand four hundred varas to the Cabeza Creek; thence with the meanders of said creek to the place of beginning; and containing four leagues, which embraces one hundred million square varas. The land is variegated; in moving about, there is encountered in parts, plains, various hills, some distant groves, and more plains, including sandbanks made by the river and said creek, and including five labors of tem-

poral, and the rest of grazing land, being in configuration that which is represented by the duplicate plats which, with due respect, are presented to you.

GEORGE W. CASH.

Town of Goliad, 15th of July, 1833.

Most Excellent Sir:—Maria de Jesus Ybarbo de Trejo, widow of the deceased Jose Trejo, who was a native and ancient settler of this town of Goliad, to your Excellency most respectfully says, that by the two annexed copies, which contain a document included, which proves the having directed to this Supreme Government, on the 6th of April, of the preceding year 1826, and on the 24th day of April, 1829, two petitions, denouncing four leagues in the same pasture land where her deceased husband had collected his larger stock and horses, in the preceding years, which land is situated on the creek called Cabeza, about three and one half leagues from this town; besides, in virtue of being possessed in proper proportion of that which she represents, in order to settle and cultivate the said land, according as found in the copy of the information which also she has had by the will of the political chief of this department, to you anew she comes, repeating her petition, so that she may be considered entitled to the favor she asks, that you will please to command the declaration, and place her in possession of said land, for thus the interested hopes from your Excellency. She swears she does not proceed in malice, but of necessity.

Most excellent Sir,

MARIA DE JESUS YBARBO.

By SAMUEL McMASTER,

Town of Goliad, 14th of June, 1832. Her agent.

Civil Judicature of Goliad, July 14th, 1832.

That represented, being in effect a repetition, this Ayuntamento have made disposition to send it to the Governor of the State for his superior approbation.

JUAN JOSE HERNANDEZ.

JOSE ANTONIO VASQUEZ.

Secretary.

Most Excellent Sir,—

Samuel McMaster, in the name of his mother-in-law, Mrs. Jesua Ybarbo, of the town of Goliad, presents himself to your Excellency, most respectfully saying, that, because in the class of settlers said four leagues cannot be obtained which is asked for, being prohibited by the last law of colonization, I ask for her I represent, said grazing land in sale, offering to comply with all the requirements of the law in relation to the matter, I ask your Excellency that you will please to serve me by conceding to me according to my petition, in which I will receive favor.

SAMUEL McMASTER.

Leona Vicario, 16th of October, 1832.

In conformity to the new law of colonization, despatched by the Honorable Congress of the State, on the 28th day of April, 1832, I concede in sale to the petition, in the name of his mother-in-law, Mrs. Jesus Ybarba, a resident of the town of Goliad, the four leagues of land which she solicits, in the plan indicated, provided by no title it belongs to a corporation, or any person; the commissioner for the distribution of lands, in the colony to which belongs that which is asked for, and in his absence, or not being within any empresa, the first or only Alcalde of the proper municipality, or that which is the nearest, complying with the dispositions given in relation to the matter, shall give the possession of said leagues, and despatch the corresponding title, previously classifying them, for the ascertainment of that which she ought to pay to the State, which payment has to be made by the interested party, in the mode and manner which the last part of said Article 13 provides, paying the fourth promptly, of which this article treats, into the treasury of the State, of which she shall present one receipt, so that in its view the secretary may proceed to give to the interested party a copy of her petition and of this decree, in order that, going with it to the commissioner, the effects may be had which are consequent.

ECA AND MASQUEZ.

SARTIAGO DEL VALLE,
Secretary.

This is a copy of the original, which remains in the archives of the office under my charge, when taken by the disposition of his Excellency the Governor. Leona Vicario, 17th of October, 1832.

SANTIAGO DEL VALLE,
Secretary.

The land asked by Mrs. Maria de Jesus Ybarba having been surveyed in consequence of the concession which she has from the Supreme Government of the State, as appears by the documents annexed to this despatch, I adjudicate to her the title of property, so that by means of it she may possess it, according to the rule of the laws. By this act, thus I decree, command, and sign, with two witnesses of my assistance, in this town of Goliad, the 16th day of July, 1833, which I certify.

JOSE MIGUEL ALDRETE.

Ass.: YLARIO DE LA GARZA,
JOSE DE JESUS RIOJAS.

I, Miguel Aldrete, first constitutional Alcalde of this town, and commissioned by the Supreme Government of the State of Coahuila and Texas, by the superior decree of the 25th day of June, 1831, for the distribution and possession of vacant lands, within the limits embraced by the (contracts made with empresarias of colonization), forasmuch as Mrs. Maria de Jesus Ybarba, in conformity to the autho-

rization, according to the concession of four leagues of land, by the superior decree of the 16th of October, 1832, has surveyed the four leagues on vacant lands, within the jurisdiction under my charge, contained in the preceding notes. In the name of the State, I confer, decree, and place her in possession, effective and personal, of one hundred million square varas, or which is the same, of four leagues of land, which are the same which I have adjudicated, and the boundaries of which are delineated in the map and notes made by the surveyor, George W. Cash, as may be seen in this despatch, composed in superficies of five million square varas, or the equivalent, five labors, which belong to the class of temporal, and ninety-five to that of pasture land; for which she ought to pay the State, in the proper instalments, in conformity to the colonization law of the 28th day of April, 1832, being intended that within one year she has to construct corners of lime at each angle of the land that she has to settle and cultivate according to the command of said law, and that she is to comply with everything, moreover, which it ordains, provided it never can pass in mortmain. For this much, using the faculties conceded to me by the law, and the consequent instructions of the 4th of September, 1827, I despatch the present title, and command that she take a Testimonio of it, that the interested party enter, so that she may possess and take the fruits of said land of which I have placed her in possession, to her, her children, heirs, and successors, or whichever of her or them shall have right or action in representation; for such is the will of the State. This given in the Town of Goliad, the 16th day of the month of July, 1833.

JOSE MIGUEL ALDRETE.

This is a (literal) copy of the original, which remains in this judicature. Town of Goliad, July 17th, 1833.

JOSE MIGUEL ALDRETE.

Ass.: FRANCO. DE LA GARZA,
ERNL. HERNANDEZ.

The deposition as read is as follows:

Exhibit B.

State of Texas, County of Nueces, to wit:

Be it remembered, that on this 22d day of August, 1851, I, Henry A. Gilpin, Chief Justice in and for the County of Nueces aforesaid, and Judge of the County Court in and for the said County, called and caused Jose Miguel Aldrete, a resident of the town of Corpus Christy and County aforesaid, to be and personally appear before me, at my office, in the said town of Corpus Christy, to testify, and the truth to say, in behalf of the plaintiff, in a certain action or matter of controversy, in a certain action of law now pending and

undetermined in the District Court of the United States for the District of Texas, at Galveston, wherein Catherine McMaster, by her next friend, Manuel Ybarba, is plaintiff, and James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, and John Tippin are defendants, there being present Robert Hughes, attorney for the plaintiff, and Charles C. Jones and Matthew Tippin, the agent of the defendant, John Tippin. The said Jose Miguel Aldrete being about 53 years of age, and being examined, cautioned, and sworn to testify the whole truth in and concerning the action at law and matter of controversy aforesaid, testified as follows, to wit:

Says he was Alcalde of the town of Goliad, in the State of Coahuila and Texas, during the year one thousand eight hundred and thirty-three: that on the sixteenth day of July, in the same year, in his capacity of Alcalde and Commissioner, he gave legal possession to Maria de Jesus Ybarba to four leagues of land, in the forks of the Cabeza and San Antonio Rivers, and extended to her the corresponding title, a copy of which was made out by the deponent, and signed by him, with his assistant witnesses, Francisco de la Garza and Eugenio Hernandez, on the seventeenth day of July, one thousand eight hundred and thirty-three, is hereto annexed, marked (A), and made a part of this deposition. That the above-mentioned witnesses were present when he gave the possession, and signed the original title, of which the annexed is a copy, as witnesses, and that they are now both dead. Says that he was well acquainted with Jose Trejo, and his wife, Maria de Jesua Ybarba, and with their only daughter, Juana, who was their only heir. That he was well acquainted with McMaster, who married Juana Trejo. That he had only one child, a daughter named Catrina, with whom he was also acquainted. That Mrs. Trejo and her daughter died of the cholera about the year 1834, and that McMaster was shot about the same time. Knows that Maria de Jesua Ybarbo was the person to whom the annexed grant was made, and that she was the wife of Jose Trejo.

Cross-examined by defendant, Tippin, and by C. C. Jones.

Says that he knows that G. W. Cash, who made the survey of these four leagues, was the surveyor for the municipality of Goliad, and its jurisdiction, and that he was duly appointed and commissioned by the Governor of the State of Coahuila and Texas; says that he cannot say positively which died first, Mrs. Trejo, or her daughter, Juana, but that both died nearly at the same time, within a few days of each other, but cannot say which died first; says that he believes that Sabriego has the original titles, and that he took them off in the Revolution, but that Powers or Cameron may have them; says that in 1833 he was the Alcalde of Goliad, and as Alcalde was appointed by the Governor of the State of Coahuila and Texas (Tesca) to act as land commissioner; and that in 1834 he got his diploma to act as commissioner only. And further this deponent saith not.

JOSE MIGL. ALDRETTE.

And I do further certify that the reason for taking the testimony of said witness is, that he resides at and in the town of Corpus Christy aforesaid, more than one hundred miles from Galveston, the place of trial of the action or controversy aforesaid, in the caption mentioned. And I do further certify, that I gave notice of the time and place of taking this deposition by written notices, directed to the defendants respectively, allowing one day for every twenty miles travel from the place of their residence to the Town of Corpus Christy aforesaid, Sundays excluded, which notices were served upon said defendants respectively by a deputy marshal, and are herewith returned, sealed up in the same envelope with this deposition; and I do further certify, that this deposition was taken by me on the day in the caption mentioned, was reduced by me to writing in the presence of the deponent, read over and fully explained to him, and then signed by said deponent in my presence; and I do further certify, that I am not of counsel or attorney to either of the parties, plaintiff or defendants, or interested in any manner whatever in the event of the action or controversy aforesaid; and I further certify, that this deposition was retained by me until sealed up and directed by law.

In testimony whereof, I have hereto set my hand and the seal of the County Court of the County of Nueces aforesaid, at Corpus Christi, this twenty-second day of August, A. D. one thousand eight hundred and fifty-one.

[SEAL.]

H. A. GILPIN,
C. J. County Court N. C.

There was then read in evidence for each party an agreement in writing as to facts, which writing is as follows:

(*Exhibit C.*)

CATHERINE MCMASTER
v.
JAMES R. JONES and others.

It is agreed between the parties, by their attorneys, that the defendants were in possession, at the institution of this suit, of portions of the tract of land as claimed by plaintiff, and such possessions were respectively under locations and surveys for William S. Gorman, Matthew T. Tippin, and John R. Tally, and under patents to Charles C. Jones and James R. Jones, as represented on the map of the surveyor, Joseph H. Barnard, on file in this cause.

It is further agreed, that the grant to Maria Jesus de Leon de Moncholo for two leagues of land, bounded on the south by the San Antonio River, and on the west by the Cabeza Creek, was dated the 14th day of October, 1833, and the survey therefrom on the same day.

It is further agreed, that the plaintiff resided in Mexico, west of

the Rio Grande River, at the time of the declaration of the independence of Texas, and that she has continued since to reside in Mexico.

ROB. HUGHES,
For Plaintiff.
PRYOR LEA,
For Defendants.

The defendants then read patents from the State of Texas. One to defendant, James R. Jones, dated 15th September, 1849, for three hundred and twenty acres; and one to Charles C. Jones, dated the 20th of February, 1847, for three hundred and twenty acres, which patents covered the possessions of said James and Charles Jones.

The map, made under the order of Court, was then exhibited as evidence for each party, and is as follows:

(*Exhibit D.*)

Map of Survey of the Maria de Jesus Ybarba tract, in the fork of the San Antonio River, Cabeza Creek, and the conflicting surveys.
Scale of 2000 *varas to the inch.*

[For map, see original, pages 57, 58.]

Explanations.

A. Point N. 57° W. 15,000 varas from mouth Cabeza.
B. Laguna.
C. Point on river, N. 59° W. 15,840 varas from mouth Cabeza, and the lower corner of a survey made for A. M. Berry, assignee of J. M. Diaz. I did not find the trees called for in the field notes of the Ybarba tract. The field notes of the Diaz survey called for the upper corner of "*an old survey now owned by the heirs of* Samuel McMaster,"—at a gum elastic tree marked on 3 sides—which I found, and terminated the river line of this survey at that point.
D Indicates a dwelling-house.

JOSEPH H. BARNARD,
Surveyor.

Goliad, 6th December, 1853.

The defendants then read the deposition of S. A. White, Joseph H. Barnard, Carlos Lazo, and Prudencio de la Garza, which are as follows:

(*Exhibit E.*)

United States District Court, Galveston.

CATHERINE McMASTER
v.
JONES et al.

S. A. White, by consent of parties in the above-entitled cause,

Not to be taken away.

states on oath that I was acquainted with the Creek Cavazo, in Goliad County, from the year 1834 until the present time. That in the year 1834, I was on said creek, and that it was a creek which stood in pools above the rancho, known as Trejo Rancho, not running as a stream, except in a wet season. That it was a running stream below said rancho, which rancho was above the old San Antonio Road, which led from Goliad to the town of San Antonio, and about two hundred yards from the creek, and immediately on the right hand of said road.

S. A. WHITE.

We agree that the foregoing statement of S. A. White may be used as a deposition in the foregoing case on the law side of said Court, and also in a case between said plaintiff and some of said parties defendants on the equity docket of said court.

ROB. HUGHES,
For Plaintiffs and Complainants.
PRYOR LEA,
Attorney and Solicitor for Defendants.

January 8, 1855.

(*Exhibit F.*)

The United States of America, District of Texas.

State of Texas, County of Goliad.

Be it remembered, that on this second day of January, in the year of our Lord one thousand eight hundred and fifty-five, I, John F. McKinney, a commissioner, duly appointed by the District Court of the United States for the District of Texas aforesaid, under and by virtue of the Act of the Congress of the United States, entitled "An Act for the more convenient taking of bail and affidavit in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of the said Congress entitled, "An Act in addition to the act entitled 'An Act for the more convenient taking of bail and affidavits in civil causes, depending in the Courts of the United States,'" passed March 1st, 1817; and the Act of the said Congress entitled, "An Act to establish the judicial courts of the United States," passed September 24th, 1789, did, at the request of Pryor Lea, solicitor and attorney of M. T. Tippin and others, call and cause to be and appear personally before me, at his residence in the said District and State, Joseph H. Barnard, to testify and the truth to say, on the part of the defendants in a certain cause or suit, now depending and undetermined in the District Court of the United States, for the District of Texas, at Galveston, in the said State of Texas, wherein Catherine McMaster, by her next friend, is plaintiff, and M. T. Tippin and others are defendants; and the said Joseph H. Barnard being of sound mind and lawful age, and having been by me first cautioned and sworn to

testify the truth, the whole truth, and nothing but the truth, in the cause or suit aforesaid, was carefully examined by me, and he did thereupon depose, testify, and say as follows, that is to say:

CATHERINE MCMASTER, by her next friend,
v.
M. T. TIPPIN and others.

Interrogatory 1st. I am the District Surveyor for Goliad District, and have been such ever since the year 1849.

Interrogatory 2d. My knowledge of titles and claims to land, on and near the Cabeza Creek, is obtained chiefly, if not entirely, from information obtained in my office. The claim called "McMaster's four league claim" lies between the Cabeza and San Antonio River; the claim of two or two and a half leagues, in the name of the widow Monchola, and now owned, as I believe, by John Cameron, lies upon the east side of the Cabeza Creek, and extends down the San Antonio River. The titles of these two tracts are dated, I believe, previous to the closing of the land offices in Texas, in 1835; all other claims upon and near the Cabeza, that I have any knowledge of, bear date subsequent to the opening of the land offices in February, 1838.

Interrogatory 3d. When I first knew the Cabeza Creek, about the year 1848, I believe it was not a running stream in ordinary weather, certainly not in dry weather. From what I have seen of the water-courses in Western Texas, I believe they all have more water now, than they had in 1833.

Interrogatory 4th. Four leagues of land contain one hundred million square varas, which, if laid in a square form, will make ten thousand varas on each side of the square, one half of which will be five thousand varas; five thousand varas from the mouth of the Cabeza, extending up the river, will not reach any of the lands claimed by Jones or Carter, but would only extend to the lower part of a tract surveyed for J. W. Levney, upon a certificate of W. Boyd.

JOSEPH H. BARNARD.

And I, John F. McKinney, the commissioner aforesaid, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the testimony of the said witness is material and necessary in the civil cause or suit, in the caption of the said deposition named, and that he lives in Goliad County, in the said State of Texas, more than one hundred miles from the place where the trial of the suit is to be had, to wit, the City of Galveston, aforesaid.

I further certify, that no notification of the time and place of taking the said deposition was given to the adverse party or her attorney, they being more than one hundred miles from the place of taking the same at the time aforesaid.

I further certify, that, on the said day and year first above mentioned, I was attended by the said witness, and thereupon the above

deposition was taken, and reduced to writing by the said witness in my presence, and, after carefully reading the same to the said witness, he subscribed his name thereto, as above written. I have retained the said deposition in my possession for the purpose of sealing up and directing the same, and, after such sealing up and directing the same to the Clerk of the Court for which the same was taken.

And I do further certify, that I am not of counsel or attorney for either of the parties in the said deposition or caption named, nor in any way interested in the event of the said cause or suit.

Witness my hand and private seal as Commissioner, at Goliad, Goliad County, State of Texas, the day and year above written.

JOHN F. McKINNEY,
United States Commissioner, District of Texas.

(*Exhibits G. & F.*)

The United States of America, District of Texas.

State of Texas, County of Goliad.

Be it remembered, that on this 30th day of January, in the year of our Lord one thousand eight hundred and fifty-five, at the town of Goliad, in the County of Goliad, in said District and State, before me, John F. M'Kinney, a commissioner of the United States to take affidavits and bail in civil causes, duly appointed by said District Court of the United States for the district aforesaid, under and by virtue of the several acts of Congress therefor, and duly qualified and acting as such commissioner, personally appeared Carlos Lazo and Prudencio de la Garza, persons of sound minds and lawful ages, witnesses for the defendants in a civil suit now depending in the District Court of the United States for the District of Texas, at Galveston, wherein Catherine McMaster, by her next friend, Manuel Ybarba, is plaintiff, and Matthew T. Tippin and others are defendants, and the said witnesses, Carlos Lazo and Prudencio de la Garza, being by me first carefully examined, cautioned, and sworn, to testify the truth, the whole truth, and nothing but the truth, do thereupon depose and say.

Carlos Laza says: Since the year 1808, he has known the Cabeza Creek. Has been acquainted with it generally ever since. About the year 1812, or 1813, he had charge of some horses and cattle, at Trejo's rancho, and almost daily, in attending to said horses and cattle, had to pass up and down said creek.

In the year 1833, the Cabeza Creek was a very small running stream, in ordinary weather, from Trejo's rancho down, but above the rancho, it was not a running stream, and in dry weather there was no water for stock above the rancho. The cattle were in the habit of going to the Maria Huella Creek to get water above the rancho.

Trejo's rancho was situated on the west side of the Cabeza Creek, about two hundred yards from its bank, and on the road leading from Goliad to San Antonio, on the north side of said road. There was no other rancho on said creek above, and one reason was, there was no water; and further this deponent saith not.

His
CARLOS + LAZO.
Mark.

Prudencio de la Garza says: He is a native of Goliad, and raised here; knew the Cabeza Creek as early as the year 1812, and when a boy, went frequently with his father to hunt stock on that creek, and from that time up to the year 1836, he knew said stream well, from its head to its mouth. Said creek was a very small running stream, from Trejo's rancho down, and never knew said stream to run above said rancho, unless after a rain, before the Revolution.

Trejo's rancho was situated on the west side of said creek, about two hundred varas from its bank, on the road leading from Goliad to San Antonio.

Never knew any other rancho above Trejo's rancho, on said stream, for the reason, Indians were bad, and there was no water; and further this deponent saith not.

PRUDENCIO DE LA GARZA.

And I, the said commissioner, do certify, that the reason for taking the said depositions of the said witnesses, Carlos Lazo and Prudencio de la Garza, is, that the same is necessary for the defendants in the said civil cause in the caption mentioned; and that the said witnesses, Carlos Lazo and Prudencio de la Garza, live in the town of Goliad, in the said State of Texas, more than one hundred miles from Galveston, in the District of Texas, the place of the trial of said cause; and I further certify, that no notification from me to the adverse party, the said Catherine McMaster, by her next friend, Manuel Ybarba, the plaintiff, to be present at the taking of said depositions, and to put interrogatories if he thought fit, was made out and served on the said adverse party, or any attorney of his, because neither was within one hundred miles of Goliad, State of Texas, aforesaid, the place of taking said depositions. I further certify, that on the date hereof, I was attended by the said witnesses at Goliad aforesaid, that the said witnesses were carefully examined, and duly sworn, through Henrique Kaylor, as interpreter, he having been first sworn by me as such, to testify the truth, the whole truth, and nothing but the truth; and that the foregoing depositions were thereupon reduced to writing by me, from the statements of the witnesses, in their presence; and after being carefully read over to and approved by the said witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession, for

the purpose of sealing up and directing the same, with this certificate, of the reasons aforesaid, of taking the same, with my own hand, to the Clerk of the Court for which the same was taken.

I further certify, that I am not of counsel or attorney to either of the parties, or in any manner interested in the event of the said civil suit in the caption mentioned.

In testimony whereof I have hereunto set my hand, this the 3d day of January, A.D. 1855.

JOHN F. McKINNEY,
U. S. Commissioner, District of Texas.

The foregoing was all the proof in the case.

The evidence being closed, the Court charged the jury, that the plaintiff must recover, if at all, on the strength of his own title; but her title being the elder, is paramount to any right shown by defendants, unless its validity has been successfully impeached by defendants.

The defendants requested the Court to charge, that if plaintiff, as a Mexican citizen, had continued to reside out of Texas, from a period anterior to the Declaration of Texan Independence, that she had no right that would sustain this suit. But the Court refused to give such instruction; and, on the contrary, said, that her right remained as it was before that Revolution, both in general principles and by force of the Treaty of Guadalupe Hidalgo; and that, if she had a right of property, that gave her the right to sue here.

The defendants requested the Court to charge, that if the jury should believe, from the evidence, that the survey and grant, under which plaintiff claims title, extends so as to include a large area, out of the limits prescribed by the law, as stated in decree 190, of the Laws of Coahuila and Texas, and that the error did not arise from mere mistake of quantity, but from a deliberate and intentional departure from the legal mode of the survey, so as to include what the law forbid in an important part, then the jury may consider the grant inoperative and void, as to such area as may be out of the limits prescribed by the law, as aforesaid; because, for so much, the grant would in that case be without authority. And further, that the grant is entirely void, in such a case, for want of any legal survey, or other proper definition of the boundaries of the land as it should have been surveyed and granted. But the Court refused to give such instruction, and stated the law of decree 190 in its terms.

The defendants requested the Court to charge, that if the jury should believe, from the evidence, that the survey and grant, under which the plaintiff claims title, extends so as to include a large area, out of the limits prescribed by the law, as before stated, and that the survey and grant were so made by fraudulent procurement on part of the grantee, by his agent in that behalf (as alleged by defendants), then the jury may consider the grant as entirely void.

And the Court so instructed the jury, but with this addition, that unless the alcalde commissioner was informed at the time he gave possession and issued the title, of the fact that said survey extended so as to include a large area out of the limits prescribed by the law, as before stated, the grant would not be void for the cause aforesaid, and that such fraudulent procurement of the survey alone would not vitiate the grant.

The defendants requested the Court to charge, that the grant under which the plaintiff claims title, is one of a class that might be forfeited for non-performance of conditions. But ordinarily, a law of the legislature and judicial action under it, would be necessary to avoid such a grant. Yet claimant under such a grant might act so as to supersede the necessity for such a judicial determination; and if the conduct of the claimant should amount to an admission of the forfeiture or negation of claim, the claimant could not afterwards set up that right, especially against any person who had in the mean time acquired a grant from the State, or who had obtained a legal survey on a valid claim for land. And it is a question of fact for the jury to determine whether the conduct of the claimant amounts to such admission of forfeiture or negation of right.

And the Court gave such instruction, with the addition, that it was a question as to the actual intention of plaintiff, and the jury should be satisfied, considering her infancy and all other circumstances, that such was in fact her intention, or they should not find against the plaintiff on such ground.

To which several opinions of the Court in the instructions given, and in refusals to give those requested, the defendants at the time excepted.

And the defendants now tender this statement and Bill of Exceptions, to be executed by the Court, and it is signed, sealed, and allowed accordingly, and ordered to be made part of the record in this cause, as to all the defendants, by consent of the parties, by their attorneys.

After the verdict, the defendants moved for a new trial, and the motion was overruled by the Court, to which opinion of the Court, in refusing a new trial, the defendants also excepted at the time, and this is signed, and sealed, and allowed, and ordered to be made part of this bill and of the record, as the above.

JOHN C. WATROUS. [SEAL.]

February 19, 1855.

It is agreed, that the foregoing statement and Bill of Exceptions applies to all the defendants, as well those on the last trial before the jury, as to those on the first trial to each branch of the cause.

ROB. HUGHES,
For Plaintiff.

PRYOR LEA,
Attorney for Defendants.

February 19th, 1855.

And afterwards, to wit, on the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and fifty-six, the defendants, by their counsel, took out a writ of error to the Supreme Court of the United States, which is as follows, to wit:

The United States of America, *ss.*

The President of the United States, to the Honorable the Judge of the District Court of the United States for the District of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said District Court, before you, between Catherine McMasters, by her next friend, Manuel Ybarbo, as plaintiff, and James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, John Tippin, Matthew T. Tippin, and John R. Tally, as defendants, a manifest error hath happened, to the great damage of the said James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, John Tippin, Matthew T. Tippin, and John R. Tally, as by their complaint appears.

We being that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Tawney, Chief Justice of the said Supreme Court, this twenty-seventh day of February, in the year of our Lord one thousand eight hundred and fifty-six.

[L. S.] JAMES LOVE,
Clerk of the District Court of the United States, District of Texas.

Allowed by,

JOHN C. WATROUS.
Judge of the District Court of the United States for the District of Texas.

And afterwards, to wit, in the same day and year, the defendants by counsel filed their bond for costs in this appeal, which is as follows, to wit:

Bond.

Know all men by these presents, that we, James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, John Tippin, Matthew

T. Tippin, and John R. Tally, and Ebenezer Allen and William G. Hale, all of the State of Texas, are held and firmly bound unto Catherine McMasters, by her next friend, Manuel Ybarbo, in the full and just sum of two hundred dollars, to be paid to the said Catherine McMasters, her certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals and dated this twenty-seventh day of February in the year of our Lord one thousand eight hundred and fifty-six.

Whereas, lately, at a term of the District Court of the United States for the District of Texas, in a suit depending in said Court between the said Catherine McMasters, by her next friend, Manuel Ybarbo, as plaintiff, and James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, John Tippin, Matthew T. Tippin, and John R. Tally, as defendants, judgment was rendered against the said James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, John Tippin, and John R. Tally; and the said James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, John Tippin, and Matthew T. Tippin, and John R. Tally, having obtained a writ of error, and filed a copy thereof in the Clerk's office of the said Court, to reverse the said judgment in the aforesaid suit, and a citation directed to the said Catherine McMasters, by her next friend, Manuel Ybarbo, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now the condition of the above obligation is such, that if the said James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, John Tippin, Matthew T. Tippin, and John R. Tally, shall prosecute their writ of error to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

JAMES R. JONES. [SEAL.]
CHARLES C. JONES. [SEAL.]
WILLIAM S. GORMAN. [SEAL.]
ROBERT LOTT. [SEAL.]
JOHN TIPPIN. [SEAL.]
JOHN R. TALLY. [SEAL.]

All the above by their attorney, Wm. G. Hale.

WILLIAM G. HALE. [SEAL.]
EBENEZER ALLEN. [SEAL.]

Sealed and delivered
in the presence of
M. M. POTTER.

Approved.

JOHN C. WATROUS.

The United States of America, District of Texas.

I, James Love, Clerk of the District Court of the United States for the District of Texas, sitting at Galveston, certify that the foregoing seventy-six pages contain a full and complete transcript of the record and all the proceedings had in a certain cause lately depending in said Court, wherein Catherine McMaster, by her next friend, Manuel Ybarbo, is plaintiff, and James R. Jones, William S. Gorman, John R. Tally, and Matthew T. Tippin, are defendants, case No. 330, on the Law Docket of said Court.

Given under my hand and the seal of said Court, at the City of Galveston, this sixteenth day of November, A. D. 1855, and the eightieth year of the Independence of the United States of America.

[SEAL.]

JAMES LOVE,
Clerk.

United States of America, *ss.*

The President of the United States, to the Honorable, the Judge of the District Court of the United States, for the District of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said District Court, before you, between Catherine McMaster, by her next friend, Manuel Ybarbo, as plaintiffs, and James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, John Tippin, Matthew T. Tippin, and John R. Tally, as defendants, a manifest error hath happened, to the great damage of the said James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, John Tippin, Matthew T. Tippin, and John R. Tally, as by this complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this twenty-seventh day of February, in the year of our Lord, one thousand eight hundred and fifty-six.

[SEAL.]

JAMES LOVE,
Clerk of the District Court of the United States,
District of Texas.

Allowed by JOHN C. WATROUS,
Judge of the District Court of the United States,
for the District of Texas.

Indorsed: James R. Jones et als. v. Catherine M'Master, etc. Writ of Error.

The United States of America.

To Catherine M'Master, by her next friend, Manuel Ybarbo, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, a copy whereof is filed in the Clerk's Office of the District Court of the United States for the District of Texas, wherein James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, John Tippin, Matthew T. Tippin, and John R. Tally, are plaintiffs in error, and you are defendant in error, to show cause if any there be why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John C. Watrous, Judge of the District Court of the United States for the District of Texas, this twenty-seventh day of February, in the year of our Lord one thousand eight hundred and fifty-six.

JOHN C. WATROUS.

On this fourteenth day of March, A. D. 1856, personally appeared J. A. H. Cleveland, U. S. Deputy Marshal for the District of Texas, before me, John S. Jones, United States Commissioner for the District of Texas, and makes oath that on the said 14th day of March, 1856, he delivered a true copy of the within citation to Robert Hughes, Esq., the attorney of record of the defendant named in the within citation.

J. A. H. CLEVELAND,
United States Deputy Marshal.

Subscribed and sworn before me, the day and date above written.

JOHN S. JONES,
United States Commissioner, District Texas.

Indorsed: James R. Jones et als. v. Catherine McMaster. Citation.

In the Supreme Court of the United States, at Washington, *ss.*
December Term, 1856.

JAMES R. JONES et als.
v.
CATHERINE MCMASTERS, etc. } Error from the District of Texas.

And now come James R. Jones, Charles C. Jones, William S. Gorman, Robert Lott, John Tippin, Matthew T. Tippin, and John R. Tally, plaintiffs in error, by their attorney, and say, that in the record of the proceedings and judgment of the District Court of the United States for the District of Texas, in this cause, manifest error appears in this:

First. That the District Court erred in sustaining the demurrer of the plaintiff in that Court to the plea in abatement to the jurisdiction of the Court, made by John R. Tally, one of the defendants; in overruling the said plea, and in proceeding to judgment in a cause, wherein that Court had manifestly no jurisdiction.

Second. That the District Court erred in giving each and all the several instructions, stated in the defendant's bill of exceptions to have been given to the jury, and also in each and every refusal on the part of the Court to give to the jury the several instructions requested by the defendants; and reference is hereby made to the bill of exceptions for the exact statement of such instructions.

Third. That the District Court erred in overruling the several motions for new trial made on the part of the defendants.

Fourth. That the District Court erred in entering judgment against the several defendants upon the pleadings and verdict.

Wherefore, and for other manifest and grievous errors, the said plaintiffs in error pray that the judgment of the said District Court may be reversed, and that this cause be remanded, with such instructions as may seem just.

W. G. HALE,
For Plaintiffs in Error.

Indorsed: No. 104. James R. Jones et al v. Catherine McMasters, etc. Assignment of Errors. Filed, 8 Nov. 1856.